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opinion

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CONCORD, N.H.

Hon. Frank D. Cate
Justice, Municipal Court
Hooksett, N. H.

Dear Judge Cate:

This will acknowledge receipt of your recent letter in which you inquire whether a Municipal Court, having lawfully committed an individual upon a proper mittimus under a sentence for a fixed period of time may order the release of such prisoner, upon his application, prior to the expiration of the period to which he has been sentenced. This question has arisen in several other Municipal Courts in recent months, and we have made an intensive study of the law seeking to determine the powers of a Municipal Court in the premises.

It is my opinion that when a Municipal Court has lawfully committed a prisoner upon a proper mittimus, it is thereafter without power or authority by statute or common law to order his release prior to the end of the sentence. An order of a Municipal Court which purports to order release under such circumstances is therefore believed to be a nullity; and it furnishes no protection to a jailer or keeper who releases a prisoner acting under it. The only means by which a prisoner once lawfully committed may be given his liberty before his term expires is through a pardon of the Governor and Council. It goes without saying that a keeper or jailer who is presented with papers showing that the prisoner has received a pardon from the Governor and Council is fully protected in acting upon it and releasing the individual. The powers granted to a Municipal Court Justice in RSA 504:1 to "suspend the execution of the sentence or any part thereof" are believed applicable only prior to the execution of a mittimus for the imprisonment of a respondent.

Trusting that the foregoing may be of assistance to you,

I am,

Sincerely yours,

Louis C. Wyman
Attorney General